

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:

EES Coke Battery, LLC  
River Rouge, Michigan

Proceedings Pursuant to  
Section 113(a)(1) of the  
Clean Air Act, 42 U.S.C.  
§ 7413(a)(1)

NOTICE OF VIOLATION

EPA-5-19-MI-04

**FINDING OF VIOLATION AND NOTICE OF VIOLATION**

The U.S. Environmental Protection Agency (EPA) is issuing this Finding of Violation and Notice of Violation (FOV/NOV) under Sections 113(a)(1) and (a)(3) of the Clean Air Act, 42 U.S.C. §§ 7413(a)(1) and (a)(3). EPA finds that EES Coke Battery, LLC (EES Coke) is violating the Michigan State Implementation Plan (SIP), as follows:

**Statutory and Regulatory Background**

**Prevention of Significant Deterioration**

1. The Prevention of Significant Deterioration (PSD) provisions of Part C of Title I of the Clean Air Act (CAA or "the Act") require preconstruction review and permitting for modifications of stationary sources. *See* 42 U.S.C. §§ 7470-7492. Pursuant to applicable regulations, if a major stationary source located in an attainment area is planning to make a major modification, then that source must obtain a PSD permit before beginning actual construction. *See* 40 C.F.R. § 52.21(i). To obtain this permit, the source must, among other things, undergo a technology review and apply Best Available Control Technology (BACT); perform a source impact analysis; perform an air quality analysis and modeling; submit appropriate information; and conduct additional impact analyses as required.
2. Pursuant to CAA Section 110, 42 U.S.C. § 7410, each state must adopt and submit to EPA for approval a State Implementation Plan (SIP) that includes, among other things, regulations to prevent the significant deterioration of air quality under CAA Sections 161-165, 42 U.S.C. §§ 7471-7475. Upon EPA approval, state SIP requirements are federally enforceable under CAA Section 113. 42 U.S.C. § 7413; 40 C.F.R. § 52.23.
3. A state may comply with Section 161 of the Act by having its own PSD regulations approved as part of its SIP by EPA, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166. If a state does not have a PSD program that has been approved by EPA and incorporated into the SIP, the federal PSD regulations set forth at 40 C.F.R. § 52.21 shall be incorporated by reference into the SIP. 40 C.F.R. § 52.21(a).
4. EPA delegated the State of Michigan the authority to issue PSD permits using the federal PSD rules at 40 C.F.R. § 52.21 (via delegation letter dated September 26, 1988).

5. On September 16, 2008, EPA conditionally approved Michigan's PSD SIP provisions. 73 *Fed. Reg.* 53366. This approval, which became effective on October 16, 2008, included approval of provisions relevant to this proceeding. On March 25, 2010, EPA fully approved Michigan's PSD SIP provisions. 75 *Fed. Reg.* 14352. On September 27, 2010, September 12, 2012, and April 4, 2014, EPA approved revisions to Michigan's PSD SIP provisions. 75 *Fed. Reg.* 59083, 77 *Fed. Reg.* 56124, and 79 *Fed. Reg.* 18802, respectively. The Michigan PSD SIP provisions, which apply to areas designated as attainment under the CAA, are codified at Mich. Admin. Code R. 336.2801 to 336.2823 ("Part 18").

6. Section 165(a) of the Act, 42 U.S.C. § 7475(a), among other things, prohibits the construction of a "major emitting facility" in an attainment area unless a permit has been issued that comports with the requirements of Section 165 and the facility employs the Best Available Control Technology (BACT) for each pollutant subject to regulation under the Act that is emitted from the facility. Similarly, the Michigan SIP prohibits actual construction of a new source or modification of a major stationary source unless that source has obtained a permit and met several requirements, including the application of BACT. Mich. Admin. Code R. 336.2802(3), 336.2810(3) to 336.2818.

#### **Nonattainment New Source Review**

7. Part D of Title I of the CAA, 42 U.S.C. §§ 7501-7515, sets forth provisions for New Source Review (NSR) requirements for areas designated as nonattainment for purposes of meeting the National Ambient Air Quality Standards (NAAQS). These provisions are referred to herein as "Nonattainment NSR." The Nonattainment NSR program is intended to reduce emissions of air pollutants in areas that have not attained the NAAQS so that the areas make progress towards meeting the NAAQS.

8. Under Section 172(c)(5) of the Nonattainment NSR provisions of the CAA, 42 U.S.C. § 7502(c)(5), a state is required to adopt Nonattainment NSR SIP rules that include provisions that require that all permits for the construction and operation of modified major stationary sources within nonattainment areas conform to the requirements of Section 173 of the CAA, 42 U.S.C. § 7503. Section 173 of the CAA, in turn, sets forth a series of requirements for the issuance of permits for major modifications to major stationary sources within nonattainment areas. 42 U.S.C. § 7503.

9. On December 16, 2013, EPA approved Mich. Admin. Code R. 336.2901 to 336.2908 ("Part 19") as part of the federally enforceable SIP for Michigan, titled, "New Source Review for Major Sources Impacting Nonattainment Areas." 78 *Fed. Reg.* 76064.

10. By rule, EPA regulates SO<sub>2</sub> as a precursor to PM<sub>2.5</sub>. 73 *Fed. Reg.* 28321, 28327-28 (May 16, 2008). Until EPA approves the Michigan SIP provisions related to Nonattainment NSR for PM<sub>2.5</sub>, 40 C.F.R. Part 51, Appendix S applies to areas of PM<sub>2.5</sub> nonattainment. 73 *Fed. Reg.* 28321, 28343 (May 16, 2008).

11. Section 173 of the Act, 42 U.S.C. § 7503, 40 C.F.R. Part 51, Appendix S, and Mich. Admin. Code R. 336.2908 provide that construction permits for a major modification in a nonattainment area may only be issued if, *inter alia*, (a) sufficient offsetting emission reductions

have been obtained to reduce existing emissions to the point where reasonable further progress towards meeting the NAAQS is made; and (b) the pollution controls to be employed will reduce emissions to the lowest achievable emission rate.

## Title V

12. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), provides that no source may operate without a Title V permit after the effective date of any permit program approved or promulgated under Title V of the Act. EPA first promulgated regulations governing state operating permit programs on July 21, 1992. *See 57 Fed. Reg.* 32295; 40 C.F.R. Part 70. EPA promulgated regulations governing the federal operating permit program on July 1, 1996. *See 61 Fed. Reg.* 34228; 40 C.F.R. Part 71.

13. Section 503 of the Act, 42 U.S.C. § 7661b, sets forth the requirement to timely submit an application for a permit, including information required to be submitted with the application.

14. Section 504(a) of the Act, 42 U.S.C. § 7661c(a), requires that each Title V permit include enforceable emission limitations and standards, a schedule of compliance, and other conditions necessary to assure compliance with applicable requirements, including those contained in a state implementation plan.

15. 40 C.F.R. § 70.1(b) provides that: "All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements." *See also Mich. Admin. Code R. 336.1211.*

16. 40 C.F.R. § 70.2 defines "applicable requirement" to include "(1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including revisions to that plan promulgated in part 52 of this chapter . . . ."

17. 40 C.F.R. § 70.7(b) provides that no source subject to 40 C.F.R. Part 70 requirements may operate without a permit as specified in the Act. *See also Mich. Admin. Code R. 336.1210.*

18. 40 C.F.R. § 70.5(a) and (c) require timely and complete permit applications for Title V permits with required information that must be submitted. *See also Mich. Admin. Code R. 336.1210.*

19. 40 C.F.R. § 70.5(b) provides that: "[a]ny applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit." *See also Mich. Admin. Code R. 336.1210(2)(b).*

## **Michigan's Title V Requirements**

20. EPA promulgated final interim approval of Michigan's Title V program on January 10, 1997. *See 62 Fed. Reg.* 1387 (effective February 10, 1997). EPA promulgated full approval of Michigan's Title V program on December 4, 2001. *See 66 Fed. Reg.* 62949 (effective November 30, 2001).

21. The Michigan regulations governing the Title V permitting program are codified at Mich. Admin. Code R. 336, and are federally enforceable pursuant to Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3).

22. Mich. Admin. Code R. 336.1213(2) provides that the Title V permit "shall contain emission limits and standards, including . . . operational requirements and limits that ensure compliance with all applicable requirements at the time of permit issuance."

23. Mich. Admin. Code R. 336.1210(1) provides that "a person shall not operate any emission units located at a stationary source required to obtain a renewable operating permit under R 336.1211, except in compliance with all applicable terms and conditions of a renewable operating permit, unless a timely and administratively complete application for a renewable operating permit has been received by the department in accordance with the following provisions of [R 336.1210]."

24. Mich. Admin. Code R. 336.1210(2)(b) provides that "[a]ny person who fails to submit any relevant facts or who has submitted incorrect information in an application for a renewable operating permit . . . shall, upon becoming aware of the failure or incorrect submittal, promptly submit all supplementary facts or corrected information. Each submittal of any relevant facts or corrected information shall include a certification by a responsible official which states that, based on information and belief formed after a reasonable inquiry, the statements in the submittal are true, accurate, and complete."

## **Definitions**

25. Mich. Admin. Code R. 336.2901(b) defines "baseline actual emissions" for an existing emissions unit, other than an electric utility steam generating unit, as the average rate, in tons per year, at which the emissions unit actually emitted the regulated new source review pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the department for a permit required under R 336.1201. *See also* 40 C.F.R. Part 51, Appendix S (Nonattainment NSR for PM<sub>2.5</sub>); Mich. Admin. Code R. 336.2801(b) and 40 C.F.R. § 52.21(b)(48) (PSD).

26. Mich. Admin. Code R. 336.2901(r) defines "lowest achievable emission rate" or "LAER," for any source, as the more stringent rate of emissions based on either of the following:

- (i) The most stringent emissions limitation that is contained in the implementation plan of any state for the same class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that the limitations are not achievable.

- (ii) The most stringent emissions limitation that is achieved in practice by the same class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. Application of the term shall not permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source performance standard.

*See also* 40 C.F.R. Part 51, Appendix S (Nonattainment NSR for PM<sub>2.5</sub>).

27. Mich. Admin. Code R. 336.2801(f) defines “best available control technology” or “BACT,” as “an emissions limitation, including a visible emissions standard, based on the maximum degree of reduction for each regulated new source review pollutant, which would be emitted from any proposed major stationary source or major modification which the department - on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs -- determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combination techniques for control of the pollutant . . . .” *See also* 40 C.F.R. § 52.21(b)(12).

28. Mich. Admin. Code R. 336.2901(s) defines “major modification” as any physical change in or change in the method of operation of a major stationary source that would result in both a significant emissions increase of a regulated new source review pollutant and a significant net emissions increase of that pollutant from the major stationary source. *See also* 40 C.F.R. Part 51, Appendix S (Nonattainment NSR for PM<sub>2.5</sub>); Mich. Admin. Code R. 336.2801(aa) and 40 C.F.R. § 52.21(b)(2) (PSD).

29. Mich. Admin. Code R. 336.2901(t) defines “major stationary source” as “[a]ny stationary source of air pollutants that emits or has the potential to emit 100 tons per year or more of any regulated new source review pollutant . . . .” *See also* 40 C.F.R. Part 51, Appendix S (Nonattainment NSR for PM<sub>2.5</sub>); Mich. Admin. Code R. 336.2801(cc) and 40 C.F.R. § 52.21(b)(1) (PSD).

30. Mich. Admin. Code R. 336.2901(v) defines “net emissions increase” with respect to any regulated new source review pollutant emitted by a major stationary source, as “the amount by which the sum of the following exceeds zero: (A) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated under R 336.2902(2). (B) Any other increases and decreases in actual emissions at the major stationary source that occur within the contemporaneous period and are otherwise creditable.” *See also* 40 C.F.R. Part 51, Appendix S (Nonattainment NSR for PM<sub>2.5</sub>); Mich. Admin. Code R. 336.2801(ee) and 40 C.F.R. § 52.21(b)(3) (PSD).

31. Mich. Admin. Code R. 336.2901(dz) defines “potential to emit” as “the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the

limitation or the effect it would have on emissions is legally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source." *See also* 40 C.F.R. Part 51, Appendix S (Nonattainment NSR for PM<sub>2.5</sub>); Mich. Admin. Code R. 336.2801(hh) and 40 C.F.R. § 52.21(b)(4) (PSD).

32. Mich. Admin. Code R. 336.2901(ee) defines "regulated new source review pollutant" to include "[a]ny pollutant for which a national ambient air quality standard has been promulgated" and "[a]ny pollutant that is a constituent or precursor of a general pollutant listed under paragraphs (i) or (ii) of this subdivision, provided that a constituent or precursor pollutant may only be regulated under new source review as part of regulation of the general pollutant." *See also* 40 C.F.R. Part 51, Appendix S (Nonattainment NSR for PM<sub>2.5</sub>) (definition of "Regulated NSR pollutant"); Mich. Admin. Code R. 336.2801(nn).

33. Mich. Admin. Code R. 336.2901(gg) defines "significant" to mean, in reference to a net emissions increase of sulfur dioxide, a rate of emissions that would equal or exceed 40 tons per year (tpy) of sulfur dioxide (SO<sub>2</sub>). *See also* Mich. Admin. Code R. 336.2801(qq)(C) and 40 C.F.R. § 52.21(b)(23) (PSD).

34. Mich. Admin. Code R. 336.2801(qq) defines "significant" to mean, in reference to a net emissions increase of particulate matter with an aerodynamic diameter of 2.5 microns or less (PM<sub>2.5</sub>), a rate of emissions that would equal or exceed 40 tpy of sulfur dioxide. *See also* 40 C.F.R. § 52.21(b)(23); 40 C.F.R. Part 51, Appendix S (Nonattainment NSR for PM<sub>2.5</sub>).

35. Mich. Admin. Code R. 336.2901(hh) defines "significant emissions increase" for a regulated new source review pollutant as "an increase in emissions that is significant for that pollutant." *See also* 40 C.F.R. Part 51, Appendix S (Nonattainment NSR for PM<sub>2.5</sub>); Mich. Admin. Code R. 336.2801(rr) and 40 C.F.R. § 52.21(b)(40) (PSD).

#### **PSD and Nonattainment NSR Applicable Requirements**

36. Mich. Admin. Code R. 336.2902(5)(b) provides that "[a]t such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation that was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of R 336.2908 shall apply to the source or modification as though construction had not yet commenced on the source or modification." *See also* 40 C.F.R. Part 51, Appendix S, IV(F) (*Source obligation*) (Nonattainment NSR for PM<sub>2.5</sub>); Mich. Admin. Code R. 336.2818 and 40 C.F.R. § 52.21(r)(4) (PSD).

37. Mich. Admin. Code R. 336.2902(1) provides that the nonattainment new source review requirements apply to each major modification that is located in a nonattainment area and which is major for the pollutant for which the area is designated nonattainment. *See also* 40 C.F.R. Part 51, Appendix S (Nonattainment NSR for PM<sub>2.5</sub>).

38. Mich. Admin. Code R. 336.2802(2) provides that the prevention of significant deterioration requirements apply to the construction of any new major stationary source or the major modification of any existing major stationary source. *See also* 40 C.F.R. § 52.21(a)(2).

39. Mich. Admin. Code R. 336.2902(2)(c) provides that “[t]he actual-to-potential test may be used for projects that involve construction of new emissions units or modification of existing emissions units. A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the potential to emit from each new or modified emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.” *See also* 40 C.F.R. Part 51, Appendix S (Nonattainment NSR for PM<sub>2.5</sub>); Mich. Admin. Code R. 336.2802(4)(d) and 40 C.F.R. § 52.21(a)(2)(iv)(d) (PSD).

40. Mich. Admin. Code R. 336.2908(3) provides that “[t]he major stationary source or major modification shall comply with the lowest achievable emissions rate for each regulated new source review pollutant for which the area is designated as nonattainment.” *See also* 40 C.F.R. Part 51, Appendix S (Nonattainment NSR for PM<sub>2.5</sub>).

41. Mich. Admin. Code R. 336.2908(5) requires that an emission reduction offset for each major nonattainment air contaminant shall be provided before the start-up of the new major stationary source or major modification and identifies the requirements for such offsets. *See also* 40 C.F.R. Part 51, Appendix S (Nonattainment NSR for PM<sub>2.5</sub>).

42. Mich. Admin. Code R. 336.2810(3) requires that a major modification shall apply BACT for each regulated new source review pollutant for which it would be a significant net emissions increase at the source in an area designated as attainment. *See also* 40 C.F.R. § 52.21(j)(3).

43. Mich. Admin. Code R. 336.2811 requires a source impact analysis which demonstrates that allowable emission increases from the proposed major source or major modification, in conjunction with all other applicable emissions increases or reduction, including secondary emissions, shall not cause or contribute to air pollution in violation of either (a) Any national ambient air quality standard in any air quality control region; or (b) Any applicable maximum allowable increase over the baseline concentration in any area. *See also* 40 C.F.R. § 52.21(k).

44. Mich. Admin. Code R. 336.2813 requires an air quality analysis be conducted in the area of the major modification, for each pollutant which has a significant increase. *See also* 40 C.F.R. § 52.21(m).

45. Mich. Admin. Code R. 336.2815 requires an additional impact analysis on the impairment to visibility, soils, and vegetation that would occur as a result of the major source or major modification and general commercial, residential, industrial, and other growth associated with the major source or major modification. *See also* 40 C.F.R. § 52.21(o).

#### **EES Coke's Facility**

46. EES Coke owns and operates a coke oven battery at 1400 Zug Island Road, River Rouge, Wayne County, Michigan (River Rouge Facility).

47. Effective March 3, 1978, the area around EES Coke's River Rouge Facility was designated attainment for SO<sub>2</sub>. 43 Fed. Reg. 8962 (March 3, 1978).

48. Prior to October 16, 2008, emissions of SO<sub>2</sub> from EES Coke's River Rouge Facility were subject to the PSD requirements at 40 C.F.R. § 52.21, which at that time were incorporated into the Michigan SIP, including the requirements for major modifications of existing major sources in attainment areas.

49. Effective October 4, 2013, the area around EES Coke's River Rouge Facility was designated nonattainment for SO<sub>2</sub>. 78 Fed. Reg. 47191 (Aug. 5, 2013).

50. Since October 4, 2013, emissions of SO<sub>2</sub> from EES Coke's River Rouge Facility have been subject to the Nonattainment NSR requirements in Part 19 of the Michigan SIP, including the requirements for major modifications of existing major sources in nonattainment areas.

51. Effective April 5, 2005, Wayne County was designated nonattainment for PM<sub>2.5</sub>. 70 Fed. Reg. 980 (Jan. 5, 2005). Effective August 29, 2013, Wayne County was designated attainment for PM<sub>2.5</sub>. 78 Fed. Reg. 53272 (Aug. 29, 2013).

52. From April 5, 2005 through August 28, 2013, emissions of PM<sub>2.5</sub> from EES Coke's River Rouge Facility were subject to the Nonattainment NSR requirements at 40 C.F.R. Part 51, Appendix S, including the requirements for major modifications of existing major sources in nonattainment areas. 70 Fed. Reg. 66045 (Nov. 1, 2005) (explaining that 40 C.F.R. Part 51, Appendix S applies where a state lacks a Nonattainment NSR program for a particular pollutant).

53. Since August 29, 2013, emissions of PM<sub>2.5</sub> from EES Coke's River Rouge Facility have been subject to the PSD requirements in Part 18 of the Michigan SIP, including the requirements for major modifications of existing major sources in attainment areas.

#### **Factual Background**

54. On May 10, 1990, National Steel Corporation, then the owner of the Great Lakes Steel Facility, which at the time included what is now EES Coke's River Rouge Facility, submitted information in support of a permit application to rebuild its No. 5 Coke Oven Battery. This document identifies that baseline SO<sub>2</sub> emissions from the existing source were 5,158 tpy from the two existing batteries, and 544 tpy from the sinter plant, for a total of 5,702 tpy. The document identified that the rebuilt No. 5 battery, with a coal charge rate of 1.3 million tpy and a coke oven gas H<sub>2</sub>S concentration of 2.68 grains per dry standard cubic feet, would have a potential to emit of 5,076 tons of SO<sub>2</sub> per year, for a total decrease in potential emissions of 626 tpy.

55. On September 5, 1990, the Michigan Department of Environmental Quality (MDEQ) issued Permit to Install (PTI) 650-88 to National Steel Corporation. Among other requirements in the permit, the permit limited coal charge at the No. 5 Coke Oven Battery to 1.3 million tons per year of dry coal in order to ensure that the project would not trigger PSD.

56. On February 5, 2008, Fishbeck, Thompson, Carr & Huber submitted a permit application on behalf of EES Coke requesting to change the coal charge limit to 1.365 million tons of dry coal charged per year. The application did not identify that the 1.3 million tpy of dry coal charge limit was put in place to ensure that the pad-up rebuild of the No. 5 Coke Oven Battery did not



trigger PSD, nor did it identify 40 C.F.R. Part 51, Appendix S, IV(F) (*Source obligation*) or 40 C.F.R. § 52.21(r)(4) as applicable requirements.

57. On October 7, 2008, MDEQ issued PTI 51-08 to EES Coke's River Rouge Facility. This PTI changed the annual coal charge limit to 1.365 million tons of dry coal charged per year.

58. The potential to emit attributable to the rebuilt No. 5 Coke Oven Battery, given the coal charge limit of 1.365 million tons of dry coal per year, is 7,135 tpy of SO<sub>2</sub>, more than 1,400 tpy of SO<sub>2</sub> greater than the baseline emissions from before the rebuild. Therefore, the relaxation of the coal charge limit caused a significant increase in SO<sub>2</sub> emissions.

59. On June 13, 2014, NTH Consultants, Ltd., submitted a permit application on behalf of EES Coke requesting multiple limit changes, including changing the coal charge limit to 1.42 million tons of dry coal charged per year. The application did not identify that the 1.3 million tons per year of dry coal charge limit was put in place to ensure that the pad-up rebuild of the No. 5 Coke Oven Battery did not trigger PSD, nor did it identify Mich. Admin. Code R. 336.2902(5)(b) or 336.2818 as applicable requirements.

60. On November 21, 2014, MDEQ issued PTI 51-08C to EES Coke's River Rouge Facility. Among other changes, this PTI changed the annual coal charge limit to 1.42 million tons of dry coal charged per year for the No. 5 Coke Oven Battery.

61. The potential to emit attributable to the rebuilt No. 5 Coke Oven Battery, given the coal charge limit of 1.42 million tons of dry coal per year, is 7,340 tpy of SO<sub>2</sub>, more than 1,600 tpy of SO<sub>2</sub> greater than the baseline emissions from before the rebuild. Therefore, the relaxation of the coal charge limit caused a significant increase in SO<sub>2</sub> emissions.

### Violations

#### **A. 2008 Project**

62. The relaxation of the coal charge limit in 2008 resulted in an emissions increase and a net annual emissions increase of SO<sub>2</sub> above 40 tpy, thus making the project a major modification for SO<sub>2</sub> under the PSD requirements in the federally-approved Michigan SIP.

63. EES Coke has not applied for or obtained any permits containing the necessary PSD requirements for SO<sub>2</sub> (including installation of BACT).

64. EES Coke's failure to apply BACT to control emissions of SO<sub>2</sub> from underfire combustion at the coke oven battery prior to commencement of operation after construction of the major modification at the coke oven battery is a violation of the federally-approved Michigan SIP. 40 C.F.R. § 52.21(j)(3). *See also* Mich. Admin. Code R. 336.2810(3).

65. The relaxation of the coal charge limit resulted in an emissions increase and a net emissions increase of SO<sub>2</sub> above 40 tpy, thus making the project a major modification for PM<sub>2.5</sub> (for which SO<sub>2</sub> is a precursor) under the Nonattainment NSR requirements in the federally-approved Michigan SIP.

66. EES Coke has not applied for or obtained any permits containing the necessary Nonattainment NSR requirements for PM<sub>2.5</sub> (including installation of LAER for SO<sub>2</sub>), nor has it obtained emissions offsets for its project.

67. EES Coke's failure to apply LAER to control emissions of SO<sub>2</sub> (as a precursor for PM<sub>2.5</sub>) from underfire combustion at the coke oven battery prior to commencement of operation after construction of the major modification at the coke oven battery is a violation of the federally-approved Michigan SIP. 40 C.F.R. Part 51, Appendix S, (IV)(A); Mich. Admin. Code R. 336.2908(3).

68. EES Coke's failure to obtain offsets for PM<sub>2.5</sub> prior to starting up after a major modification to the coke oven battery is a violation of the federally-approved Michigan SIP. 40 C.F.R. Part 51, Appendix S, (IV)(A); Mich. Admin. Code R. 336.2908(5).

#### **B. 2014 Project**

69. The relaxation of the coal charge limit in 2014 resulted in an emissions increase and a net emissions increase of SO<sub>2</sub> above 40 tpy, thus making the project a major modification for SO<sub>2</sub> under the nonattainment new source review requirements in the federally-approved Michigan SIP. Mich. Admin. Code R. 336.2902(5)(b).

70. EES Coke has not applied for or obtained any permits containing the necessary nonattainment new source review requirements for SO<sub>2</sub> (including installation of LAER), nor has it obtained emission offsets for its projects.

71. EES Coke's failure to apply LAER to control emissions of SO<sub>2</sub> from underfire combustion at the coke oven battery prior to commencement of operation after construction of the major modification at the coke oven battery is a violation of the federally-approved Michigan SIP Rule at Mich. Admin. Code R. 336.2908(3).

72. EES Coke's failure to obtain offsets for SO<sub>2</sub> prior to starting up after a major modification to the coke oven battery is a violation of the federally-approved Michigan SIP Rule at Mich. Admin. Code R. 336.2908(5).

73. The relaxation of the coal charge limit resulted in an emissions increase and a net emissions increase of SO<sub>2</sub> above 40 tpy, thus making the project a major modification for PM<sub>2.5</sub> (for which SO<sub>2</sub> is a precursor) under the PSD requirements in the federally-approved Michigan SIP. Mich. Admin. Code R. 336.2818.

74. EES Coke has not applied for or obtained any permits containing the necessary PSD requirements for PM<sub>2.5</sub> (including installation of BACT for SO<sub>2</sub>).

75. EES Coke's failure to apply BACT to control emissions of SO<sub>2</sub> (as a precursor for PM<sub>2.5</sub>) from underfire combustion at the coke oven battery prior to commencement of operation after construction of the major modification at the coke oven battery is a violation of the federally-approved Michigan SIP Rule at Mich. Admin. Code R. 336.2810(3).

76. EES Coke's failure to conduct a source impact analysis, air quality analysis, and additional impact analyses for PM<sub>2.5</sub> prior to starting up after a major modification to the coke oven battery is a violation of the federally-approved Michigan SIP Rules at Mich. Admin. Code R. 336.2811, 336.2813, and 336.2815.

### C. Title V Violations

77. EES Coke has failed and continues to fail to submit a timely and complete Title V permit application for the River Rouge Facility with information concerning all applicable requirements pertaining to the modifications referred to in paragraphs 54 through 61, above,, including, but not limited to, the requirement to apply, install and operate BACT or LAER for SO<sub>2</sub> at the No. 5 Coke Oven Battery, and also failed to supplement or correct the Title V permit applications for the River Rouge Facility in violation of the regulations at 40 C.F.R. Part 70, including, but not limited to, 40 C.F.R. § 70.1(b), 70.5(a), (b) and (c), and 70.7(b). *See also* Mich. Admin. Code R. 336.1210(1) and 336.1210(2)(b).

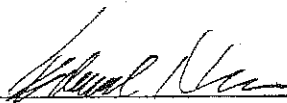
### Environmental Impact of Violations

77. These violations have caused or can cause excess emissions of SO<sub>2</sub>. Current scientific evidence links short-term exposures to SO<sub>2</sub>, ranging from 5 minutes to 24 hours, with an array of adverse respiratory effects including bronchoconstriction and increased asthma symptoms.

78. SO<sub>2</sub> is a precursor to PM<sub>2.5</sub>. Particulate matter, especially fine particulates, contains microscopic solids or liquid droplets, which can get deep into the lungs and cause serious health problems. Particulate matter exposure contributes to:

- irritation of the airways, coughing, and difficulty breathing;
- decreased lung function;
- aggravated asthma;
- chronic bronchitis;
- irregular heartbeat;
- nonfatal heart attacks; and
- premature death in people with heart or lung disease.

3/22/19  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Edward Nam  
Director  
Air and Radiation Division



**CERTIFICATE OF MAILING**

I certify that I sent a Notice of Violation, No. EPA-5-19-MI-04, by Certified Mail, Return

Receipt Requested, to:


Brenna Harden, Senior Environmental Engineer  
EES Coke Battery, LLC  
1400 Zug Island Road  
River Rouge, Michigan 48218

I also certify that I sent copies of the Notice of Violation by first-class mail to:

Jenine Camilleri, Enforcement Unit Supervisor  
Air Quality Division  
Michigan Department of Environmental Quality  
camillerij@michigan.gov

Mina McLemore, Detroit District Supervisor  
Air Quality Division  
Michigan Department of Environmental Quality  
mclemorew@michigan.gov

On the 29<sup>th</sup> day of March 2019.



Kathy Jones  
Program Technician  
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER: 7018 0680 0002 2759 3857

